

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

DEREK E.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2013120774

DECISION DENYING APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on February 10, 2014, in Torrance.

The record was closed and the matter submitted for decision at the conclusion of the hearing.

Claimant, who was present, was represented by his father. Claimant's mother was also present.¹

Elizabeth Stroh, Service Coordination Quality Manager, represented the Harbor Regional Center (HRC or Service Agency).

ISSUES

1. Shall the Service Agency provide transportation between Claimant's day program in Long Beach and his mother's alternate residence in Los Angeles?
2. Shall the Service Agency increase the family's monthly respite by 16 hours?

¹ Initials and family titles are used to protect the privacy of Claimant and his family.

EVIDENCE RELIED ON

In making this Decision, the ALJ relied on exhibits 2-13 submitted by the Service Agency, and exhibits 1-4 and 6-9 submitted by Claimant. The ALJ took official notice of the statute contained in HRC exhibit 14. The parties' prehearing briefs were read and considered, but they are not evidence. The ALJ also relied on the testimony of Dr. Wendel Eckford; Mary Hernandez; Claudia DeMarco; Tonia Schwichtenberg; Diana Struett; and Claimant's mother.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is 23 years old. He is a consumer of HRC through his eligible diagnosis of autism.
2. HRC provides funding for Claimant to attend a day program in Long Beach, and for transportation to and from his home and the day program. Although his parents are divorced, both have primary residences in Long Beach. Claimant splits time living with each.
3. In 2013, Claimant's parents experienced changes in their personal and professional lives, including that Claimant's mother resided for substantial periods of time in Los Angeles, which impacted how and when Claimant would be cared for at home.
4. By no later than September 25, 2013, Claimant's parents advised HRC that they planned to have Claimant live part of the week with his father in Long Beach and the rest of the week with his mother in Los Angeles. To support that plan, Claimant's parents requested HRC to fund transportation to and from the day program in Long Beach and Claimant's mother's alternate home in Los Angeles when Claimant lived with her there. They also requested 16 hours per month of additional respite to accommodate the new living arrangements. This request was later memorialized in correspondence from the family dated November 26, 2013.
5. By a letter dated December 4, 2013, Claimant's parents were advised that HRC had denied their request.
6. On December 20, 2013, a Fair Hearing Request on Claimant's behalf was submitted to the Service Agency, which appealed HRC's aforementioned denial.
7. Claimant's mother is his authorized representative in this matter, by virtue of her status as his limited conservator.

Claimant's Living Arrangements

8. Claimant lives with his parents, who are divorced. His parents live separately but have cooperated closely in Claimant's care. Claimant splits his time living in his parents' separate homes. Both parents maintain primary homes in Long Beach.

9. For many years, the baseline arrangement was for Claimant to spend half of his time with each parent. However, in periods when his father was impacted by work issues, Claimant's mother absorbed a greater share of Claimant's care, and vice versa.

10. Claimant's family conditions changed in 2013, which caused the need to alter the past arrangements. For example, Claimant's mother's work obligations changed substantially, in that she was promoted to a significant position within a large agency of Los Angeles County. The nature of her position requires her to work significant hours. As a result, Claimant's mother now stays frequently in Los Angeles, close to her office, at the home of her significant other, Dr. Wendel Eckford, a college professor. Claimant's mother still maintains her home in Long Beach, but she does not stay there as often as before.

11. As a result, Claimant spent more time living with his father in Long Beach, which was facilitated by assistance from his grandmother, who is in her 90s. In November 2013, however, Claimant's grandmother suffered a fall, fractured her femur, and is no longer able to assist substantially in caring for Claimant.

12. Claimant's father must now take a greater share of Claimant's care. Claimant's father is an attorney in private practice, with business obligations in Nicaragua, and in Paso Robles, California. Recently, Claimant has spent the week with his father and weekends with his mother at her alternate home in Los Angeles.

13. Claimant attends a day program Monday through Friday at the Ability First Adult Program (Ability First) in Long Beach, which he has attended since he exited the public school system at age 22. He is transported to and from either parent's home in Long Beach to Ability First by Round Trip Transportation, Inc. (Round Trip) under contract with HRC.

Claimant's Transportation Request

14. As a result of these changes, Claimant's parents requested augmented transportation assistance to alleviate the situation. Specifically, they proposed that, following Claimant's day program on Thursdays, Claimant be transported from Ability First in Long Beach to his mother's alternate residence in Los Angeles. He would attend an alternate day program in Los Angeles on Fridays and Mondays, and then be transported to his father's home in Long Beach Monday afternoon. The thought behind this proposal is to return to the basic plan of Claimant living roughly half the time with each parent.

15. HRC has agreed to place Claimant in an alternative day program in Los Angeles for Fridays and Mondays to accommodate the family. Under that scenario, only two trips between Long Beach and Los Angeles would be required. Further, Claimant's mother could take advantage of the assistance of Dr. Eckford, who is familiar with Claimant's situation, has a disabled child of his own, and is willing to supervise Claimant during the day while his mother is at work. This is possible because Dr. Eckford is able to work from home for the most part.

16. HRC spends \$12,910.80 per year on Claimant's day care program at Ability First. HRC pays Round Trip \$46 per trip to transport Claimant to and from his Long Beach homes and Ability First.

17. HRC does not have a transportation vendor who is contracted to provide consumer transportation outside of HRC's catchment area and into another regional center's catchment area. Claimant's parents' plan poses logistical problems. First, HRC would have to contract with transporters in two different catchment areas. Second, the economics are such that multiple consumers ride in the same van, would not be possible for trips when Claimant is taken to and from Long Beach and Los Angeles. These issues would cause a significant increase in HRC's cost to transport Claimant to and from Los Angeles.

18. Claimant's mother independently researched transportation costs. She found two companies willing to transport Claimant to and from Long Beach and Los Angeles. One provider is Cambrian Homecare (Cambrian), who is vendored with HRC to provide respite care to Claimant; but Cambrian is not vendored to provide transportation to HRC consumers. Cambrian would charge a fee of \$22 per hour, with a minimum of two hours, plus \$0.55 per mile, plus \$18 per hour for additional hours exceeding two. Claimant's mother estimated that it would cost roughly \$90 each trip. The other provider is Ambiance, who would provide this transportation for \$110.50 per trip, consisting of \$85.50 plus a \$25.00 out of area fee. It was not established whether Ambiance is vendored with HRC in any capacity, but it is not a vendored transporter of HRC. These costs are roughly double what Round Trip charges HRC to transport Claimant.

Other Relevant Facts

19. Claimant's parents recently examined the possibility of placing Claimant in a residential home. After viewing a potential location, they have determined that placement is not desirable at this time. Claimant's parents are therefore in the process of developing a new long-term plan. Claimant's father intends to relocate to the Paso Robles area within 15 months. The property he plans to purchase there includes a building suitable for conversion to a guesthouse. The family would like for Claimant live with his father in Paso Robles and stay in the guesthouse. Claimant's mother would visit him on weekends.

20. HRC funds 24 hours per month of respite through Cambrian. The respite is used at Claimant's father's home in Long Beach. The family has requested additional respite hours as a resource for occasional sitters in the Los Angeles area to use when Claimant is with his mother.

21. Claimant has also been awarded 283 hours a month of In-Home Supportive Services (IHSS). Due to a state-mandated reduction of all recipients' hours effective July 1, 2013, Claimant's IHSS hours have been reduced to 260 hours a month. The IHSS hours include approximately 40 hours per week of protective supervision.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.²) An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act to appeal a contrary regional center decision. (§§ 4700-4716.) Claimant requested a hearing and therefore jurisdiction for this appeal was established. (Factual Findings 1-7.)

2. The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

3. When one seeks government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefits].) This general rule is consonant with federal law applicable to special education services, as in those cases the burden of persuasion to establish entitlement to services not agreed upon by a school district is also on a consumer's family. (*Schaffer v. Weast* (2005) 546 U.S. 49, 51.) In this case, Claimant bears the burden of proof because he is seeking funding that HRC has not before agreed to provide, i.e., funding for transportation to and from Claimant's day program in Long Beach and his mother's alternate residence in Los Angeles. (Factual Findings 1-7.)

Claimant's Transportation Needs

4. Section 4501 stresses that, to the maximum extent feasible, services and supports should be available to prevent the dislocation of persons with developmental disabilities from their home communities. Section 4502, subdivision (a), provides a statement of rights accorded to persons with developmental disabilities, including, but not limited to, services and supports provided in the least restrictive environment; subdivision (j), states that

² All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

consumers also have the right to make choices in their own lives, including, but not limited to, where and with whom they live, and relationships with people in their community.

5. Section 4648, subdivision (a)(1), expresses the intent of the Legislature that services and supports are to assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices, and that the individual program planning team should give the highest preference to those services and supports which would allow adult persons with developmental disabilities to live as independently as possible in the community.

6. The Lanterman Act established a network of various regional centers, each given its own geographical (catchment) area in which to provide services. When a client moves into another regional center's catchment area, their eligibility for services continues. If services are not available in the new regional center's catchment area, an individual program plan (IPP) meeting must be held within 30 days so that services can be determined going forward. (§ 4643.5) Generally, each regional center acts as an independent agency tasked to develop resources within their catchment area to provide services. (§§ 4560, 4620, 4620.3.) This explains why HRC does not have a vendor contracted to provide transportation to Los Angeles and the logistical complications underlying Claimant's parents' request.

7. Generally, the Lanterman Act requires regional centers to provide services and supports in a cost-effective manner, and to exhaust other resources to meet a consumer's needs, including funding from other government agencies, insurance, IHSS hours, and natural supports from a consumer's family and community supports. (§§ 4646, 4646.4, 4646.5, 4647, and 4648.)

8. Pursuant to section 4512, subdivision (b), regional centers are responsible for providing transportation services necessary to ensure delivery of services to persons with developmental disabilities. This includes transporting a client to and from work, school, or a day program. However, recently enacted section 4648.55, subdivision (b), mandates that for adult consumers, a regional center shall fund the least expensive transportation modality that meets the consumer's needs; and shall fund transportation, when required, from the consumer's residence to the lowest-cost vendor that provides the service that meets the consumer's needs. For this purpose, though, the cost of a vendor shall be determined by combining the vendor's program costs and the costs to transport a consumer from the consumer's residence to the vendor. Section 4648.55 indicates that cost-effectiveness is important when considering transportation costs.

9. In this case, while there is no statute or regulation that expressly prohibits the transportation funding requested by Claimant's family, neither is there one mandating it. By agreeing to find a day program near the alternate home of Claimant's mother and continuing to provide transportation to and from either parent's home to either Ability First or an alternate day program in the Los Angeles area, HRC would meet the general mandates of the Lanterman Act. Moreover, it is not apparent that the failure of HRC to fund the requested transportation modification will lead to Claimant being dislocated from home.

10. This case boils down to a request that HRC fund the transportation of Claimant between the custodial homes of his divorced parents. Such is generally the obligation of a family, not the state. Claimant has natural supports at home and in his community that can perform that function. HRC is entitled to rely on those natural supports, as well as generic resources, before committing to an additional expense. There are a number of other options available to Claimant's parents, such as Claimant continuing to reside with his mother in her alternate home on weekends; Claimant's mother picking him up from her ex-husband's home Thursday evening and staying with Claimant in her primary Long Beach home Thursday through Sunday, etc. It is not lost on the ALJ that a little over one year from now, in all likelihood, Claimant will be living with his father in Central California and his mother will see him on some weekends. As a factual matter, therefore, Claimant's parents have not met their burden of establishing that the requested funding is necessary in order to fulfill the mandates of the Lanterman Act.

11. On the other hand, providing the new transportation funding will roughly double Claimant's transportation costs. The spirit of section 4648.35 generally frowns on funding the most expensive form of transportation. Such would also be inconsistent with the general dictates expressed in the Lanterman Act that regional centers should provide services in a cost-effective manner.

12. Under the circumstances described above, Claimant has failed to establish by a preponderance of the evidence that cause exists to order HRC to provide funding for transportation to and from Ability First in Long Beach and his mother's alternate home in Los Angeles.

Claimant's Respite Needs

13. Respite services are designed to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member. (§ 4690.2, subd. (a).)

14. In this case, Claimant did not establish a need for additional respite hours. The reasons for the request and how the additional hours would be used were vaguely presented. However, it is clear that the additional hours would be used for purposes of supervising Claimant. As respite is designed to be used as intermittent and temporary relief from the stress of meeting the needs of a disabled family member, the stated reason for the request does not match the design and definition of the service. If Claimant's parents have difficulty providing sufficient supervision of Claimant while they are out of their respective homes, there are other services specifically designed for that purpose, not respite.

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ORDER

Claimant Derek E.'s appeal is denied.

DATE: February 27, 2014

A handwritten signature in black ink, appearing to read 'ES', is written over a horizontal line.

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision.
Either party may appeal this decision to a court of competent jurisdiction within 90 days.